

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 23, 2009

D052606 People v. McNeely

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

D052325 Townsend v. Townsend

The December 13, 2007, order is reversed insofar as it concludes that Cynthia's proposed challenge to the First Amendment would violate the Trust's no contest clause. James II is to bear costs on appeal. CERTIFIED FOR PUBLICATION. Aaron, J.;
We Concur: Huffman, Acting P.J., McIntyre, J.

**D053943 Wendie E. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

The petition for rehearing is denied.

D053478 People v. Breazeale

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D052239 Juneau v. County of San Diego, Department of Animal Services

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McDonald, J.

D053071 Rammel v. Burnham

The judgment and order are affirmed. Rammel shall recover her costs on appeal.
Nares, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D052386 Pardo v. The Regents of The University of California

The petition for rehearing is denied.

D054500 Mutch v. Superior Court of San Diego County/Mutch

The petition is denied.

D053660 In re Pressly on Habeas Corpus

The petition is denied.

D054380 In re Peavy on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 24, 2009

D051939 Ivanov v. Stoeva

Judgment affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

D052220 Lowry v. Motor Works-Pro-Mac, LLC et al.

The trial court's order sustaining defendants' demurrer without leave to amend and the court's order of dismissal are affirmed. Respondents are entitled to costs on appeal. Aaron, J.; We Concur: Nares, Acting P.J., Irion, J.

D053967 In re Enrique R. et al., Juveniles

The appeals are dismissed. Irion, J.; We Concur: Huffman, Acting P.J., Nares, J.

D054187 In re D. L., a Juvenile

The appeal is dismissed. Benke, Acting P.J.; We Concur: Aaron, J., Irion, J.

D052006 Kozicki v. Craig et al.

The order and default judgment are affirmed as modified, to reduce the amount of statutory penalties to that reflected in the published summons (\$600 for a total of two statutory violations), and to reduce the two awards of \$50,000 punitive damages against Appellants, to an amount that is constitutionally proper in light of the monetary penalties awarded and proportionality principles (i.e., six times the joint \$600 award, or one award of \$3,600 to be jointly and severally assessed against Appellants). Upon return of the remittitur, the trial court is directed to prepare a modified judgment that will reflect these corrections, with the remainder to remain the same. Costs on appeal are awarded to Plaintiffs and Respondents. Huffman, Acting P.J.; We Concur: McDonald, J., Irion, J.

D054528 In re Elster on Habeas Corpus

The petition is denied without prejudice to being re-filed in the Second District Court of Appeal. The clerk is directed to retain 1 copy of the petition for our records and return the original petition and exhibits to Elster so he may file them in the appropriate court.

D052760 People v. Rose

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D052283 In re the Marriage of Jasso

The postjudgment order of the trial court is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 24, 2009 (Continued)

D051983 Brown et al. v. Ransweiler

We affirm the trial court's grant of summary judgment in favor of Ransweiler. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: Huffman, Acting P.J., Irion, J.

D052126 In re Wright on Habeas Corpus

The Governor's decision reversing the 2007 BPH decision finding Wright suitable for parole and setting a parole date is vacated. As in *People v. Elkins* (2006) 144 Cal.App.4th 475, 503, the BPH is ordered to release Wright forthwith pursuant to the conditions set forth in the 2007 decision by the BPH. Because Wright's release would have been final nearly two years ago, and in the interests of justice, this opinion shall be final as to this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D054177 In re Amanda R., a Juvenile

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rules 8.412(d)(1)(A), and 8.416(g). The appeal is dismissed.

D053702 In re Elizabeth P. et al., Juveniles

The order is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

D052492 People v. Heard

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D054235 In re Levi R., a Juvenile

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)2.)

D054600 Hale v. Superior Court of San Diego County/Hyatt Regency La Jolla, et al.

The petition is denied.

D053686 In re Trinity F., a Juvenile

The orders are affirmed. Nares, J.; We Concur: McDonald, J., Benke, Acting P.J.

D053668 People v. Turner

D053684 People v. Turner

Appellant's unopposed motion to consolidate the above-entitled appeals is granted. All documents will be filed under D053668.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 25, 2009

D051583 Center Associates v. Altman et al.

The order is affirmed. Costs on appeal to respondent. Huffman, Acting P.J.;
We Concur: Haller, J., Irion, J.,

D053278 Sanzaro v. Smith

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D053131 In re Marriage of Nguyen

The order is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

D052712 In re Marriage of Nguyen

The order is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

D054133 In re Davis on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Nares, McIntyre and Irion. Petitioner challenges a rules violation he received at Calipatria State Prison (CSP). However, he has provided no documentation establishing that he has exhausted administrative remedies. Moreover, petitioner indicates he did not present a habeas petition to the trial court, claiming the Imperial County Superior Court does not answer CSP prisoner writ petitions. The petition is denied for failing to exhaust administrative remedies and properly present a habeas petition to the superior court in the first instance. (See *Wright v. State* (2004) 122 Cal.App.4th 659, 664-666; *In re Steele* (2004) 32 Cal.4th 682, 692.) The petition is denied.

D052967 People v. Brown

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

D054551 Thomas v. The Superior Court of San Diego County/People

The petition is denied.

D054421 Medina v. The Superior Court of San Diego County/Hernandez et al.

The petition is denied.

D054012 In re Willson on Habeas Corpus

The petition is denied.

D054276 Sam Kholi Enterprises, Inc. v. Superior Court of San Diego County/Lefler

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 26, 2009

D054394 In re the Marriage of Rowsell

Pursuant to California Rules of Court, rule 8.140, the appeal filed January 5, 2009, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

D052280 People v. Judge

The judgment of conviction is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D052383 Singleton v. Puglia et al.

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D052516 In re Adrian G., a Juvenile

We direct the juvenile court to amend the conditions of probation in its February 7, 2008, minute order to delete the condition restricting Adrian's ability to enter the United States for any purpose other than attending school or work. In all other respects, the order appealed from is affirmed. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D052514 In re the Marriage of Boyd

That part of the December 24, 2007, order awarding Elizabeth additional child support as a percentage of Bradley's future earnings is reversed. In all other respects, the order is affirmed. The matter is remanded for further proceedings in accordance with this opinion. Bradley is entitled to his costs on appeal. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

D051987 Hartwell v. Children's Hospital San Diego

The appeal is dismissed. The parties are to bear their own costs on appeal. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

D053546 People v. Horn

The trial court is instructed to amend the abstract of judgment to reflect that the upper term was imposed for the burglary count and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. (See fn. 1, *ante*.) The judgment as modified is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 27, 2009

D053870 People v. Godfrey

The judgment is modified to reflect a \$200 restitution fine (1202.4, subd. (b)) and a \$200 parole revocation fine (1202.45) in place of the \$1000 fines and to reflect that the \$200 probation revocation fine (1202.44) is now due. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

Benke, Acting P.J.; We Concur: Nares, J., Irion, J.

D053010 People v. Montoy

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Irion, J.

D052140 People v. Carter

The judgment of conviction is affirmed. Benke, Acting P.J., We Concur: Haller, J., McDonald, J.

D053463 People v. Stewart

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., Irion, J.

D054418 Tolbert et al. v. City of El Cajon

The appeal filed December 31, 2008, is dismissed because appellant did not timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 8.122(c), 8.130(b), 8.140).

D051963 People v. Goddu

The judgment of the trial court is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., Irion, J.

D051304 People v. Lenora

The judgment is modified to strike the four section 11370.2 (a) enhancements for counts two and three. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting this modification and to forward a copy to the Department of Corrections and Rehabilitation. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D053805 In re Gabriel L., a Juvenile

The orders are affirmed. Nares, Acting P.J.; We Concur: Haller, J., Aaron, J.

D053529 Piro v. Piro

The order is affirmed. Gary is entitled to costs on appeal. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 27, 2009 (Continued)

D052776 Piro v. Piro

The order authorizing Gary to sell the Trust's real property interests, approving payment of Trustee fees of \$45,000 through December 29, 2007, and approving payment of attorney fees through January 31, 2008, of \$1,715.75 to attorney William Pulz and \$17,989.12 to the Law Offices of Wesley Pelzer is affirmed. Gary is entitled to costs on appeal. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

D050412 SLPR, LLC v. Sikorski

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D052839 Foster v. Foster

Respondent's motion to dismiss the appeal, appellant's opposition and respondent's supplemental supporting declaration have been read and considered by Presiding Justice McConnell and Associate Justices McIntyre and Irion. The appeal is dismissed.